

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA

Ricky Jamison, #239647,)	
)	C/A No. 6:11-2578-MBS
Plaintiff,)	
)	
vs.)	ORDER
)	
Lt. Wright and Officer Anderson,)	
)	
Defendants.)	
_____)	

Plaintiff Ricky Jamison is an inmate in custody of the South Carolina Department of Corrections. He currently is housed at McCormick Correctional Institution in McCormick, South Carolina. Plaintiff, proceeding pro se, filed a complaint on September 29, 2011, alleging that he was subjected to excessive force and deliberate indifference to a resulting injury. He brings this action pursuant to 42 U.S.C. § 1983. Plaintiff also asserts state law tort claims for assault and battery. In accordance with 28 U.S.C. § 636(b) and Local Rule 73.02, D.S.C., this matter was referred to United States Magistrate Judge Kevin F. McDonald for pretrial handling.

On February 23, 2012, Defendants filed a motion for summary judgment, asserting, among other things, that the complaint should be dismissed because Plaintiff has failed to exhaust his administrative remedies as required by 42 U.S.C. § 1997(e)(a) and Porter v. Nussle, 534 U.S. 516, 524 (2002). On June 29, 2012, the Magistrate Judge issued a Report of Magistrate Judge in which he recommended that Defendants' motion for summary judgment be granted as to this issue and that the complaint be dismissed, without prejudice, for failure to exhaust administrative remedies. Plaintiff filed no objections to the Report of Magistrate Judge.

The Magistrate Judge makes only a recommendation to this court. The recommendation has no presumptive weight. The responsibility for making a final determination remains with this court.

Mathews v. Weber, 423 U.S. 261, 270 (1976). This court may accept, reject, or modify, in whole or in part, the findings or recommendations made by the Magistrate Judge. 28 U.S.C. § 636(b)(1). This court may also receive further evidence or recommit the matter to the Magistrate Judge with instructions. Id. In the absence of a timely filed objection, a district court need not conduct a de novo review, but instead must “only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.” Diamond v. Colonial Life & Acc. Ins. Co., 416 F.3d 310, 315 (4th Cir. 2005).

The court has thoroughly reviewed the record. The court adopts the Report of Magistrate Judge and incorporates it herein by reference. Defendants’ motion for summary judgment (ECF No. 55) is granted to the extent that Defendants assert that Plaintiff has failed to exhaust his administrative remedies. The complaint therefore is dismissed, without prejudice.

IT IS SO ORDERED.

/s/ Margaret B. Seymour
Chief United States District Judge

Columbia, South Carolina

August 30, 2012

NOTICE OF RIGHT TO APPEAL

Plaintiff is hereby notified of the right to appeal this order pursuant to Rules 3 and 4 of the Federal Rules of Appellate Procedure.